

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**CORWIN D. ARMSTRONG,**

**Plaintiff,**

**v.**

**DUKE UNIVERSITY and  
THE FUQUA SCHOOL OF  
BUSINESS,**

**Defendants.**

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**1:04CV1206**

**RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This matter comes before the Court on the motion of Defendants to dismiss this action (Docket No. 16) due to Plaintiff's failure to prosecute his claim. *See* Fed. R. Civ. P. 41(b). Plaintiff Armstrong, who proceeds *pro se*, was notified of his right to respond to the motion to dismiss and of the possible consequences should he fail to do so. Nonetheless, Plaintiff has filed no response, and the time for response has run. *See* LR7.3(f). For the reasons set forth below, the Court finds that the motion of Duke University and the Fuqua School of Business should be granted and this action should be dismissed.

The record shows that on January 27, 2006, this Court stayed this action and compelled arbitration. (Docket No. 13, Order.) Defendants twice mailed to Plaintiff forms

so that Plaintiff could initiate arbitration through the American Arbitration Association. Plaintiff made no response and took no action.

On March 24, 2008, Judge Tilley of this court conducted a status conference and granted to Plaintiff Armstrong an extension until 5:00 p.m. on April 23, 2008 to submit a claim to the American Arbitration Association. Defendants, on June 5, 2008, filed their motion to dismiss for lack of prosecution, advising the Court that Plaintiff had not by that date filed an arbitration demand. Plaintiff has not responded to the motion to dismiss, and the motion may be deemed uncontested. *See* LR7.3(k).

On the basis of the record as described above, it appears that Plaintiff has not prosecuted this case with reasonable diligence and has not complied with Court directives on the manner in which he must proceed. Under the authority of Rule 41(b), this action should therefore be dismissed.

#### Conclusion

For reasons set forth above, **IT IS RECOMMENDED** that Defendants' motion to dismiss (Docket No. 16) be granted and that this action be dismissed with prejudice.

/s/ P. Trevor Sharp  
United States Magistrate Judge

Date: August 5, 2008